

(2019) 03 MP CK 0019
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5179 Of 2016

Mahaveer Nath

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 19(6), 21, 47, 48A, 249, 250, 252
Wild Life (Protection) Act, 1972 — Section 1, 2, 4, 6, 8, 9, 11, 12, 18, 19, 24, 33, 34,
35, 36, 38, 39, 40, 43, 44, 49, 49A, 49B, 49C, 50, 51, 54, 55, 57, 59, 60, 61, 62, 63,
64, 66
Essential Commodities Act, 1955 — Section 3

Citation : AIR 2019 MP 193 : (2019) 9 FLT 808 : (2019) 2 JLJ 107 : (2019) 3
MPLJ 103

Hon'ble Judges : Sanjay Yadav, J; Vivek Agarwal, J

Bench : Division Bench

Advocate : S.K. Sharma, Vivek Khedkar, F.A. Shah, Nidhi Patankar

Final Decision : Dismissed

Judgement

Sanjay Yadav, J

Constitutional validity of Section 9 and 11 of the Wild Life (Protection) Act 1972 is being questioned by the petitioner who claims to be a member of Nath/Sapera community which, as alleged, is deprived to carry out the vocation of snake charming for their livelihood. However, except the occasion of "Nagpanchami" (a traditional worship of snakes or serpents observed by Hindus throughout India, Nepal and other countries where the worship is offered on the fifth day of bright half of lunar month of Shravana, according to the Hindu calendar). The petitioner; however, has failed to bring on record any authentic information as would establish that except 'snake charming', the Nath community has no other source of livelihood. Be that as it may. It is urged that the members of said community live in cluster in the remote area adjoining city of Gwalior and are dependent on snake showing for their livelihood. It is urged that the members of community possess high level of indigenous knowledge of wild animals and are

"barefoot conservative educators". It is urged that the reach of the members of this community being there in the society they play vital role in sensitizing people to reptiles. It is contended that age old traditional occupation and vocation by the members of community has been abruptly put to an end by prohibiting the keeping of snakes vide impugned provisions, which besides being violative of fundamental right to trade under Article 19(1)(g) of Constitution, also violates the guarantee under Article 21 of the Constitution. Thus, it is the alleged hardship said to be faced by the Sapera Community which is the basis for challenging the constitutional validity of Section 9 and Section 11 of the Act of 1972.

(2) The Union of India, on their turn, has defended the validity. It is urged that despite the enactment to protect wildlife being brought in vogue in the year 1972, it was experienced that more stringent provisions are required to save the wildlife which led the Parliament to amend Section 9 & 11 of 1972 Act. It is urged that no empirical data has been filed by the petitioner to establish that the only source of livelihood of the Sapera Community is through snake charming. On these contentions, respondent/Union of India seeks dismissal of petition.

(3) Respondents/State of Madhya Pradesh and Municipal Corporation, Gwalior (M.P.) join Union of India in support of Section 9 and 11.

(4) Considered rival submissions.

(5) The Wild Life (Protection) Act, 1972, was enacted to provide for the protection of wild animals, birds and plants and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons of the Act reads as follows:

The rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas which were once teeming with wild life have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life need to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912), has become completely outmoded. The existing State laws are not only out-dated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in wild life produce. Further such laws mainly relate to control of hunting and do not emphasise the other factors which are also prime reasons for the decline of India's wild life, namely, taxidermy and trade in wild life and products derived therefrom.

2. Having considered the relevant local provisions existing in the States, the government came to the conclusion that these are neither adequate nor satisfactory. There is therefore, an urgent need for introducing a comprehensive legislation, which would provide for the protection of wild animals and birds and for all matters connected therewith or ancillary and incidental thereto.

3. Legislation in respect of the aforesaid subject-matters relatable to entry 20 of the State list in the Seventh Schedule to the Constitution, namely, protection of wild animals and birds and Parliament has no power to make a law in this regard applicable to the State (apart from the provisions of articles 249 and 250 of the Constitution) unless the Legislatures of two or more States pass a resolution in pursuance of article 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Legislatures of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal have passed such resolutions.

4. The Bill seeks to-

(a) constitute a Wild Life Advisory Board for each State;

(b) regulate hunting of wild animal and birds;

(c) lay down the procedure for declaring area as Sanctuaries, National Parks, etc.;

(d) regulate possession, acquisition or transfer of, or trade in wild animals, animal articles and trophies and taxidermy thereof;

(e) provide penalties for contravention of the Act.

(6) In "State of Bihar Vs. Murad Ali Khan and Others [(1988) 4 SCC 655]", it is observed:

"8..... The policy and object of the Wild life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological-imbalances introduced by the deprivations inflicted on nature by man. The State to which the ecological-imbalances and the consequent environmental damage have reached is so alarming that unless immediate, determined and effective steps were taken the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate has been a great and urgent necessity for the survival of humanity and these laws reflect a last ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilised man is that "Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he can not repair and cannot foresee". In his foreward to International Wild Life Law, H.R.H Prince Philip, The Duke of Edinburgh said:

Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that ...

...As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regretfully progress

in this direction is proving disastrously slow [See International Wild life Law by Simon Lyster, Cambridge-Grotuis Publications Limited, 1985 Edn.]

9. There have been a series of international conventions for the preservation and protection of the environment 'The United Nations General Assembly adopted on October 29, 1982 "The World charter for nature". The Charter declares the Awareness that:

(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.

(b) Civilization is rooted in nature which has shaped human culture and influenced all artistic and scientific achievement and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation.

10. In the third century B.C. King Asoka issued a decree that "has a particularly contemporary ring" in the matter of preservation of wild life and environment. Towards the end of his reign, he wrote:

Twenty-six years after my coronation I declared that the following animals were not to be killed: parrots mynas, the aruna, ruddy geese, Wild geese the nandimukha cranes, bats, queen ants. terrapins, boneless fish, rhinoceroses...and all quadrupeds which are not useful or edible ...Forests must not be burned.

Environmentalists' conception of the ecological balance in nature is based on the fundamental concept that nature is "a series of complex biotic communities of which a man is an interdependant part" and that it should not be given to a part to trespass and diminish the whole. The largest single factor in the depletion of the wealth of animal life in nature has been the civilized man" operating directly through excessive commercial hunting or, more disastrously, indirectly through invading or destroying natural habitats.

(7) That by Wild Life (Protection) Amendment Act, 1991 (Act No. 44 of 1991), which received the assent of the President on September 20, 1991 and was published in the Gazette in India dated September 20, 1991, Part Z.1 Ex. P. 1 (No. 6), extensive amendments were made in the Principal Act, it amended the title of the Principal Act so as to be called the Wild Animals, Birds and Plants (Protection) Act, 1972. It brought about changes in sections 1, 2, 4, 6, 8, 12, 18, 19, 24, 33, 34, 35, 36, 38, 39, 40, 43, 44, 49, 49A, 49B, 49C, 50, 51, 54, 57, 59, 60, 61, 62, 63, 64, 66, Schedule II, Schedule III and Schedule IV of the Principal Act. Besides, it also made the following changes:-

(1) It substituted new section for Ss. 9, 29 and 55 of the Principal Act;

(2) It omitted Ss. 10 and 13 to 17 of the Principal Act;

(3) It inserted two new chapters, namely, Chapter IIIA and Chapter IVA, in the Principal Act; and

(4) It inserted new Schedule, namely, Schedule VI, in the Principal Act.

(8) In order to appreciate the necessity to carry out the amendments in the Principal Act it would be advantageous to have an insight into the purposes of the Amendment Act, 1991 which is reflected in the Statement of Objects and Reasons of the Amendment Bill :-

"The Wild Life (Protection) Act, 1972 provides for the protection of wild animals and birds.

2. In the implementation of the Act over 18 years, the need for amendment of certain provisions of the Act to bring them in line with the requirements of the present times has been felt.

The Indian Board for wild life also endorsed the need for these amendments. Ministry of Environment and Forests has worked out the proposals for amendment of the Act on the basis of recommendations of the Standing Committee of Indian Board for Wild Life and various ministries of the government.

3. Poaching of wild animals and illegal trade of products derived therefrom together with degradation and depletion, of habitats have seriously affected wild life population. In order to check this trend, it is proposed to prohibit hunting of all wild animals (other than vermin). However, hunting of wild animals in exceptional circumstances, particularly for the purpose of protection of life and property and for education, research, scientific management and captive breeding, would continue. It is being made mandatory for every transporter not to transport any wild life product without proper permission. The penalties for various offences are proposed to be suitably enhanced to make them deterrent. The Central Government officers as well as individuals now can also file complaints in the courts for offences under the Act. It is also proposed to provide for appointment of honorary Wild Life Wardens and payment of rewards to persons helping in apprehension of offenders.

4. To curb large scale mortalities in wild animals due to communicable diseases, it is proposed to make provisions for compulsory immunisation of livestock in and around National Parks and Sanctuaries.

5. Realising the need to protect offshore marine flora and fauna, the provision of National Parks and Sanctuaries are proposed to be extended to the territorial waters. It is also being provided that while declaring any part of territorial waters as a sanctuary due precaution shall be taken to safeguard the occupational interests of local fishermen.

6. While making the provisions of the Act more effective and stringent, due regard has also been given to the rights of the local people, particularly the tribals. It is being provided that except for the areas under reserve forests, (where the rights of the people have already been settled) and the territorial waters no area can be declared a sanctuary unless the rights of the people have been settled. State Wildlife Advisory Boards are also being made responsible for

suggesting ways and means to harmonise the needs of tribals and the protection of wildlife.

7. In the recent times, there has been a mushroom growth of zoos in India. Zoos, if managed properly, serve a useful role in the preservation of wild animals. So far there is no legislation dealing with zoos. Provisions are now being made for setting up of a Central Zoo Authority responsible for overseeing the functioning and development of zoos in the country. Only such zoos would be allowed to operate as are recognised and maintain animals in accordance with the norms and standards prescribed by the Zoo Authority. Activities causing disturbance to animals in a zoo are being made a punishable offence.

8. Over exploitation has endangered the survival of certain species of plants. Although the export of these plants and their derivatives is restricted under the provisions of the export policy and the "Convention of International Trade in Endangered Species of Wild Fauna and Flora" to which India is a Party, yet there is no restriction on collection of these species from the wild. Provision to prohibit collection and exploitation of wild plants which are threatened with extinction, is being made. Cultivation and trade of such plants would, however, be permitted under licence. The provisions, however, would not affect the collection of traditionally used plants for the bona fide personal use of the tribals.

9. It may be recalled that the Parties to the "Convention on International Trade in Endangered Species of Wild Fauna and Flora" (CITES), being greatly concerned by the decline in population of African elephant (sic) the import and export of African ivory for commercial purposes has been prohibited. As a result import of ivory would no longer be possible to meet the requirements of the domestic ivory trade. If the ivory trade is allowed to continue, it will lead to large scale poaching of Indian elephants. With this point in view, the trade in African ivory within the country is proposed to be banned after giving due opportunity to ivory traders to dispose off their existing stock.

10. The existing legal provisions do not permit the collection of snake venom for producing life saving drugs from snakes like Cobra and Russel's Viper. This is causing hardship. It is, therefore, proposed to amend the Act to provide for extraction of and dealing in snake venom in a regulated manner.

11. The Bill seeks to achieve the aforesaid objects."

(9) At this stage it will also be useful to set out below extracts from the statement of the Minister of State of Environment and Forests in the Lok Sabha which he made at the floor of the House while moving the Bill :

"That the Bill further to amend the Wild Life (Protection) Act, 1972, as passed by Rajya Sabha be taken into consideration."

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Wildlife in our country has suffered serious depletion on account of pressures

exerted by the rapid growth of population and the consumption oriented approach, regardless of the need to maintain essential bio-diversity and ecological processes, balances, and life-support systems which are so vital for land productivity, food security and human survival. Setting up a network of effectively managed National Park and Sanctuaries is the highest priority of Wildlife Conservation. With this point in view, the provisions with regard to Management of Parks and Sanctuaries are being made more effective and stringent. Realising the need to protect off shore marine flora and fauna, the legal provisions of National Park and Sanctuaries are proposed to be extended to territorial waters as well.

As already mentioned, wildlife populations and habitats have degraded to a great extent under the pressure of human activities. We can no more afford to kill wild animals for the sake of pleasure of a few person, thus disrupting life forms and linkages vital for the preservation of bio-diversity. Wildlife is also in no position to bear the burden of capturing of wild animals for commercial purposes.

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Poaching of wild animals and illegal trade, has over the years, taken serious dimensions because of the exponential rise in the price of wild animals and their products. The job of a poacher gets more and more lucrative as a particular species gets rarer. Therefore, proposals have been made in the Bill to make the penalties for various offences more deterrent. It is being made mandatory for every transporter not to accept any consignment of wildlife products without proper sanction from the authorised officers....."

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(10) Section 9 and Section 11 of 1972 Act, which are under challenge, stipulate:

"9. Prohibition of Hunting.- No person shall hunt any wild animal specified in Schedule, I, II, III and IV except as provided under section 11 and section 12.

11. Hunting of Wild animals to be permitted in certain cases. - (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of Chapter IV, -

(a) the Chief Wildlife Warden may, if he is satisfied that any wild animal specified in Schedule 1 has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or cause animal to be hunted;

Provided that no wild animal shall be ordered to be killed unless Chief Wild Life Warden is satisfied that such animal cannot be captured, translocated or translocated;

Provided further that no such captured animal shall be kept in captivity unless the Chief Wild Life Warden is satisfied that such animal cannot be rehabilitated in the wild and the reasons for the same are recorded in writing.

Explanation.- For the purposes of clause (a) the process of capture or translocation, as the case may be, of such animal shall be made in such manner as to cause minimum trauma to the said animal.

(b) the Chief Wildlife Warden or the authorised officer may, if he is satisfied that any wild animal specified in Schedule II Schedule III or Schedule IV has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefor, permit any person to hunt such animal or group of animals in a specified area or cause such animal or group of animals in the specified area to be hunted.

(2) The killing or wounding in good faith of any wild animal in defence of oneself or of any other person shall not be an offence;

Provided that nothing in this sub-section shall exonerate any person who, when such defence becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made thereunder.

(3) Any wild animal killed or wounded in defence of any person shall be Government property."

(11) Thus, Section 9 prohibits hunting of any wild animal specified in Schedule I, II, III & IV. However, an exception is carved out vide Section 11 and 12 which respectively empowers the Chief Wild Life Warden, if he is satisfied that any wild animal, specified in Schedule I, II, III and IV, has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating reasons therefor, permit any person to hunt such animal or cause such animal to be hunted.

(12) The petitioner questions the constitutionality of these two provisions, viz., Section 9 and 11 on the ground that they violate Art. 19(1)(g), 14, and 21 of the Constitution.

(13) As regard to challenge on the anvil of 19(1)(g) of the Constitution is concerned, the petitioner, as noticed previously, has not been able to establish that the community in question inherits and inheres fundamental right to practice the profession of snake charming or to carry it out as an occupation. Besides, the right conferred under Article 19(1)(g) of Constitution is not an absolute right but is liable to be restricted under clause (6) of Article 19 which envisages:

Clause (6) of Article 19 of Constitution:

"Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

(14) In "T.B. Ibrahim, Proprietor, Bus Stand, Tanjore Vs. The Regional Transport Authority, Tanjore [AIR 1953 SC 79]", it is observed:

"13.There is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience....."

(15) In "Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India [(1992) 2 SCC 343]", it is held:

"59. This court in *Hatisingh Mfg. Co. Ltd. & Anr. v. Union of India & Ors.* [1960] 3 SCR 528, held that freedom to carry on trade or business is not an absolute one. In the interest of the general public, the law may impose restrictions on the freedom of the citizen to start or carry on his business, whether an impugned provision imposing a fetter on the exercise of the fundamental right guaranteed by Article 19(1)(g) amounts to a reasonable restriction imposed in the interest of general public, must be adjudged not in the background of any theoretical standard or pre-determinate patterns, but in the light of the nature and the incidence of the right, the interest of the general public sought to be secured by imposing restrictions and the reasonableness of the quality and the extent of the fetters imposed by the directions....."

(16) In "Balram Kumawat Vs. Union of India and others [AIR 2003 SC 3268]", it is observed:

"13. What has been banned is ivory. There is complete prohibition of trade in ivory. Such a complete prohibition is a reasonable restriction within the meaning of Clause (6) of Article 19 of the Constitution of India. The impugned Act being not unreasonable does not also attract the wrath of Article 14 of the Constitution of India."

(17) Dwelling upon the challenge to similar prohibition to trade in ivory brought in vogue by 44th Amendment; whereby, Section 9 is incorporated, Full Bench of Delhi High Court in "M/s. Ivory Traders and Manufacturers Association and others Vs. Union of India and others [AIR 1997 Delhi 267]" observed:

"26. Rights granted under Article 19(1) are not absolute rights but are qualified rights and restrictions including prohibition thereon can be imposed in public interest. There is high authority for the proposition that when it is reasonable in public interest, a trade could even be prohibited under Article 19(6) and such a prohibition would not fall foul of Article 19(1)(g) . In *Narender Kumar v. The Union of India*, AIR 1960 SC 430, a question arose as to whether Non- Ferrous

Metal Control Order, 1958 which was issued by the Government of India under Section 3 of the Essential Commodities Act, 1955, violated Article 19(1)(g). The Court while interpreting the word 'restrictions' held as follows (Para 18 of AIR):

"It is reasonable to think that the makers of the Constitution considered the word "restriction" to be sufficiently wide to save laws "inconsistent" with Art. 19(1), or "taking away the rights" conferred by the Article, provided this inconsistency or taking away was reasonable in the interests of the different matters mentioned in the clause. There can be no doubt therefore, that they intended the word "restriction" to include cases of "prohibition" also. The contention that a law prohibiting the exercise of a 'fundamental right is in no case' saved, cannot therefore be accepted."

31. As is apparent from the aforesaid decision of the Apex Court, the reasonableness of law imposing restriction must be considered in the back drop of the facts and circumstances under which it was enacted, the nature of evil that was sought to be remedied by such law, and the ratio of harm caused to a person or group of persons by the legislations as compared to the beneficial effect reasonably expected to result to the general public. The Court must also consider the question whether the restraint caused by the law was more than what was necessary in the interest of the general public. When so considered it is obvious that the provisions of the Amendment Act 44 of 1991 cannot be said to be imposing unreasonable restriction on the trade of the ivory.

32. A law designed to abate extinction of an animal specie is prima facie one enacted for the protection of public interest as it was enacted to preserve and protect the elephant from extinction. It was not only the perception of the Parliament but of the world community as well, as reflected in the CITES, that the elephant must be protected from being wiped out from the face of the earth by excesses of man. Learned Counsel for the petitioners relied upon the decision of the Supreme Court in *Chintaman Rao v. The State of Madhya Pradesh*, 1950 SCR 759 : (AIR 1957 SC 118), in support of his submission that total prohibition in trade of ivory is violative of Article 19(1)(g). In that decision the validity of the Central Provinces and Berar Regulation on Manufacture of Bidis (Agricultural Purposes) Act, totally prohibiting the manufacture of Bidis during agricultural seasons, was challenged. The State pleaded that the ban was necessary so that enough people could be available for agricultural purposes. The Supreme Court struck down the prohibition on the ground that the object of the statute was to provide a measure for the supply of adequate labour for agricultural purposes in Bidi manufacturing areas of the province which could well have been achieved by legislation restraining the employment of agricultural labour. This decision is of no avail to the learned Counsel for the petitioners as in the instant case the situation was so grave that the purpose of the legislation could only be achieved by prohibiting the trade in ivory. The statistics pointed out above clearly indicate the danger which the elephant specie faced at the hands of man for his easy gains. Therefore, under the circumstances, it cannot be said that the restriction

imposed by the Amendment Act 44 of 1991 was unreasonable, arbitrary, unfair, or excessive. The State has the power to prohibit absolutely every form of activity in relation to killing or slaughtering of elephants including the sale of tusks or articles made therefrom as such form of activity is injurious to public interest.

39. Trading in animals close to being wiped out of existence and articles made from their bones, skins or other parts of their bodies, is a situation akin to dealing in any other noxious or pernicious trade e.g. intoxicating drugs. While the Parliament can impose a ban on trading in endangered species or articles derived from them in furtherance of Art. 48A, it can prohibit trade in intoxicating drugs and liquors in compliance with the mandate of Article 47. Courts have recognised that made or business in intoxicating drug and liquor is not a fundamental right as it is dangerous and noxious. Similarly on parity of reasoning business in animal species on the verge of extinction being dangerous and pernicious is, therefore, not covered by Article 19(1)(g).

44. Once again we will assume for the sake of arguments that trade in such animals is fundamental right and the impugned legislation imposes fetters thereon but the fact remains that the impugned legislation is for effectuating the purpose of Article 48A. When the Legislature imposes restriction or prohibition or a ban to fulfill the mandate of the directive principles of the State policy, the restriction, prohibition or ban, is in the interests of the general public, as the expression interests of the general public occurring in Art. 19(6) is of a wide import including matters covered in Part IV of the Constitution. We are in this view supported by the decision of the Supreme Court in *Municipal Corporation of the City of Ahmedabad v. Jan Mohammed Usmanbhai*, AIR 1986 SC 1205, where it was held as follows (para 19) :

"The expression 'in the interest of general public' is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution.

45. In *Pappasam Labour Union v. Madura Coats Ltd.*, (1993) 1 SCC 501 (at page 513) : (AIR 1995 SC 2200 at p. 2206) the Supreme Court relying upon its earlier decision in *Minerva Mills case*, (1992) 3 SCC 336 : (1992 AIR SCW 1378), held that ordinarily any restriction imposed which has the effect of promoting or effectuating the directive principles can be presumed to be reasonable restriction in public interest.

46. Therefore, when a legislation imposes restriction on the right of a trader for giving effect to any of the provisions of Part IV of the Constitution, the restriction will be deemed to be in the interest of the general public."

The decision in *M/s Ivory Traders and Manufacturers Association* (supra) has been affirmed by the Hon'ble Supreme Court in the case of *Balram Kumawat* (supra).

(18) In view above, the challenge to Section 9 and 11 of 1972 Act on the anvil of Art. 19(1)(g) read with Art.21 of the Constitution fails.

(19) The next ground is hardship. As noticed, the petitioner has not adverted to any empirical study as would establish that the only vocation of the Sapera Community is snake charming.

(20) Even otherwise, as held in "Prafulla Kumar Das and others Vs. State of Orissa and others [(2003) 11 SCC 614]" that:

"45. ...A mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness. A valid piece of legislation, thus, can be struck down only if it is found to be ultra vires Article 14 of the Constitution of India and not otherwise."

(21) In view whereof, we do not perceive any merit in the challenge to the constitutional validity of Section 9 and Section 11 of 1972 Act. Consequently, petition fails and is dismissed. No costs.